

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JESSE E. PHILLIPS,

Plaintiff,

v.

**GREEN TREE SERVICING, LLC,
f.k.a. CONSECO FINANCING
SERVICES CORP., et al.,**

Defendants.

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Civil Action No. 3:05-CV-2523-O

REPORT AND RECOMMENDATION

Pursuant to the District Court's Order, entered April 3, 2006, this case has been referred to the United States Magistrate Judge for pretrial management. On December 11, 2007, the Court ordered Plaintiff to show good cause as to why the remaining defendants have not been served. The Court warned that if good cause was not shown within twenty (20) days, the defendants who have not been served will be dismissed. Plaintiff did not respond to the Court's order, and did not show good cause as to why the remaining defendants in this case have not been served within 120 days as required by FED. R. CIV. P. 4. Accordingly, the Court recommends that the remaining defendants be dismissed from the case.

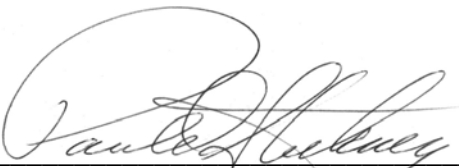
The Court having completed pretrial management now returns the case to the District Court with this recommendation. The Court has reviewed the record and finds that no other defendants remain in this case. On July 7, 2006, the United States Magistrate Judge entered three separate Findings, Conclusions, and Recommendations concerning several motions to dismiss. The First Findings, Conclusions, and Recommendation was entered on (1) Green Tree Servicing, LLC

(“Green Tree”) and Richard A. McKinney’s (“McKinney”) Motion to Dismiss; (2) Defendant Gregory Scott’s (“Scott”) Motion to Dismiss; (3) Defendant Foremost Insurance (“Foremost Insurance”) and its Defendant Employees’, Chris Dyer (“Dyer”), Bobbie Nors (“Nors”), and Ivey Lynn Brush (“Brush”), Motion to Dismiss; (4) Michael Stockham (“Stockham”), Katharine Battaia Richter (“Richter”), Mano Deayala (“Deayala”), and James S. Bavouset’s (“Bavouset”) Motion to Dismiss; (5) Ronald D. Cross’s (“Cross”) Motion to Dismiss; and (6) Nationwide Housing Systems LP’s (“Nationwide”) Motion to Dismiss. The second Findings, Conclusions, and Recommendation was entered on Defendant Judge Robert W. Kindaid’s (Judge Kinkaid”) Motion to Dismiss. The final Findings, Conclusions, and Recommendation was entered on Defendant Texas Department of Insurance’s (“TDI”) Motion to Dismiss. On August 2, 2006, the District Court adopted all three Findings, Conclusions, and Recommendations, granted all motions to dismiss, and dismissed Plaintiff’s claims against Green Tree, McKinney, Scott, Foremost Insurance, Dyer, Nors, Brush, Stockham, Richter, Deayala, Bavouset, Cross, Nationwide, Judge Kinkaid, and TDI.

On December 13, 2007, the United States Magistrate Judge entered Findings, Conclusions, and Recommendation on Defendants Paul E. Fulbright (“Fulbright”), Dwayne Binder, and Amelia Binder’s (collectively “the Binders”) Objection to Jurisdiction, which was filed as part of Fulbright’s and the Binder’s answer on March 2, 2006. The Court determined that Plaintiff’s pleadings were insufficient to sustain jurisdiction because Plaintiff failed to state a claim against Fulbright and the Binders under U.S.C. § 1983 because the state actor requirement had not been met. On January 7, 2007, the District Court adopted the Findings, Conclusions, and Recommendation, and dismissed all of Plaintiff’s claims against Fulbright and the Binders.

Since the remaining defendants have not been served within 120 day as required by FED. R. Civ. P. 4 and no other defendants remain in this case, the Court recommends that the unserved defendants be dismissed from the case without prejudice and that the entire case be dismissed without prejudice.

SO ORDERED. Signed, January 25, 2008.



PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE